

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

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In the Matter of)

Inter-Carrier Compensation)
For ISP-Bound Traffic)

CC Docket No. 99-68

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APR 27 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY

The National Exchange Carrier Association, Inc. (NECA) submits this reply to comments filed in response to the Commission's *Declaratory Ruling and Notice of Proposed Rulemaking* in the above-captioned proceeding.¹

Comments filed in this proceeding make clear that there is substantial confusion regarding the proper treatment of Internet traffic for separations purposes. In its *Declaratory Ruling*, the Federal Communications Commission (FCC or Commission) determined that Internet Service Provider (ISP)-bound traffic is primarily interstate in nature.² The *Declaratory Ruling & NPRM* asserts, however, that "incumbent LECs have characterized expenses and revenues associated with ISP-bound traffic as *intrastate* for separations purposes."³ The Commission goes on to state that it is:

¹ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket No. 96-98, *Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 96-98*, FCC 99-38 (rel. Feb. 26, 1999) (*Declaratory Ruling & NPRM*).

² *Id.* at ¶ 18.

³ *Id.* at ¶ 23. (emphasis added). The Commission notes, however, that not all ILECs follow this practice. *Id.* at n. 76, citing Letter from B. Jeannie Fry, Directory of Federal Regulatory Affairs, SBC Communications, Inc., to Ken Moran, Chief, Accounting and Audits Division, FCC (Jan. 20, 1998).

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mindful of concerns that our jurisdictional analysis may result in allocation to different jurisdictions of the cost and revenues associated with ISP-bound traffic, and we wish to make clear that we have no intention of permitting such a mismatch to occur. With respect to current arrangements, we note that this order does not alter the long-standing determination that ESPs (including ISPs) can procure their connection to LEC end offices under intrastate end-user tariffs, and thus for those LECs subject to jurisdictional separations both the costs and the revenues associated with such *connections* will continue to be accounted for as intrastate.⁴

A number of commenting parties express concern over the apparent inconsistency between the interstate nature of Internet traffic and its intrastate treatment for separations purposes. For example, the National Telephone Cooperative Association (NTCA) points out that the Commission has “recognized . . . that the ISP-bound traffic is interstate and . . . that costs and revenues cannot be mismatched, [but] nevertheless proceeds to deny the only possible and logical result of its conclusion by asserting that the costs and revenues of ISP connections to LEC end offices will continue to be accounted for as intrastate.”⁵

Similarly, the State Members of the Federal-State Joint Board on Separations assert that the Commission’s conclusion that “certain services are jurisdictionally interstate but are treated as intrastate for separations purposes . . . may have opened a door that could create unnecessary jurisdictional cost allocation questions and inconsistencies.”⁶ Moreover, as the State Members point out, “[t]he absence of a clear

⁴ *Id.* at ¶ 36 (emphasis added).

⁵ Comments of NTCA at 8 (Apr. 12, 1999). *See also* Comments of Indiana Utility Regulatory Commission at 5 (Apr. 12, 1999); Comments of Cincinnati Bell Telephone Co. at 6 (Apr. 12, 1999), and Comments of State of Florida Public Service Commission at 9 (Apr. 12, 1999).

⁶ Comments of the State Members of the CC Docket 80-286 Federal–State Joint Board on Separations at 3 (Apr. 16, 1999) (State Members).

recognition in Part 36 of the jurisdictional shift has led to a variety of ad hoc and often inconsistent ways of dealing with costs.”⁷

Drawing a distinction between the separations treatment of local loop plant and local switching costs, GVNW reads the language of the *Declaratory Ruling & NPRM* as confirming that Internet *usage* (*i.e.*, Internet traffic) should be accounted for as interstate for purposes of jurisdictional cost studies.⁸ In GVNW's view, current separations rules require that the costs associated with local loops or "connections" provided to ISPs will continue to be allocated between the jurisdictions in accordance with Part 36 separations rules, and recovered via a combination of interstate end user charges, Carrier Common Line (CCL) charges, Presubscribed Interexchange Carrier Charges (PICC), and state-tariffed local service charges.⁹

With respect to allocation and recovery of local switching costs, however, GVNW asserts that current practice requires that these costs be allocated between the jurisdictions based on usage, with Internet usage being treated as interstate accordingly.¹⁰ As JSI notes, the Commission appears to accept the fact that Southwestern Bell Corporation is planning to allocate 100 percent of dial-up ISP-bound traffic to the interstate jurisdiction.¹¹ According to JSI, the fact that the Commission "failed to declare that this

⁷ *Id.* at 5. See also Comments of the Vermont Public Service Board at 4 (Apr. 12, 1999) (pointing out that, while “[t]he Commission has established that a substantial portion of end-to-end Internet transactions are jurisdictionally interstate, . . . the Commission has not yet explained what this decision means in practice.”)

⁸ See Comments of GVNW Consulting, Inc. at 4 (Apr. 12, 1999) (GVNW).

⁹ *Id.*

¹⁰ *Id.* at 5-7.

¹¹ Comments of John Staurulakis, Inc. at 9 (Apr. 12, 1999) (JSI).

procedure is inconsistent with its Ruling" means that it has "established a precedent regarding the proper treatment of traffic for separation purposes."¹²

NECA believes that the Commission should immediately clarify that Internet *traffic* is to be treated as interstate for separations purposes. Alternatively, the Commission should either direct carriers to exclude Internet traffic from the development of jurisdictional allocation factors (an approach that would be consistent with the exemption of this traffic from interstate access billing); or, it should adopt an interim "freeze" of separations factors pending long-term separations reform.¹³ In any case, the Commission must act quickly, so as to avoid continued uncertainty and inconsistent treatment of this traffic in jurisdictional cost studies.

Respectfully submitted,

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April 27, 1999

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¹² *Id.* at n. 9.

¹³ These latter approaches are discussed in detail in the Joint Comments submitted by NECA, NTCA, Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), and the Rural Telephone Coalition in CC Docket 80-286, as well as comments of other entities. See Joint Comments of NECA, NTCA, OPASTCO, and the Rural Telephone Coalition (Mar. 30, 1999), and Comments of Ameritech at 8 - 10, Bell Atlantic at 3 - 4, JSI at 5, GTE at 9, GVNW at 9 - 10, NECA at 5, SBC at 8 - 9, Smithville Telephone at 9, TDS at 3 - 4 and 11, and USTA at 2 - 3 and 10 - 11 (Mar. 30, 1999).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply was served this 27th day of April 1999, by US Mail and by hand delivery to the persons listed below.

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